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10/643,496	08/19/2003	Jerome A. Cohen	6842-0002-1	5471
7590 Richard R. Michaud Michaud-Duffy Group LLP Suite 206 306 Industrial Park Road Middletown, CT 06457		01/02/2008	EXAMINER SAFAVI, MICHAEL	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/643,496
Filing Date: August 19, 2003
Appellant(s): COHEN, JEROME A.

MAILED

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GROUP 3600

Michaud-Duffy Group LLP,
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 26, 2007 appealing from the Office action mailed February 28, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on May 26, 2006 has not been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,153,807	Nyman	10-1964
3,825,220	Schmaltz	7-1974
D493,351	Wegman	7-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nyman '807 in view of Wegman '351.

Nyman discloses first and second connecting members 1a, 1b, each defining at least one joining portion 5 with each of said first and second connecting members being coupable to an end of a "foundation form" 14 so that when said forms are operably positioned adjacent to one another said joining portions defined by each of said connecting members interlock with one another, (i.e., interleave). Each joining portion defines a shaped passage extending there through with the shaped passage being substantially coaxial with one another when said first and second connecting members

are operably positioned. An elongated coupling member 6 defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting members and thereby said "foundation forms" together. Attaching means in the form of apertures is at 7.

Nyman does not specifically call for a T-shaped slot to allow attachment of a form board to the surface of the connecting members via a fastener installed in the form board. However, Wegman '351, as at Figs. 1 and 6, teaches utilization of a T-shaped slot within a side surface of the respective connecting members to allow for maneuverable attachment of the respective connecting member, or hinge, to a respectively attached board or panel.

Therefore, to have provided the side surfaces 2, 3 of Nyman with T-shaped slots in place of openings 7, thus allowing a maneuverable attachment of the Nyman hinge to the boards 14, (particularly a board possessing a preinstalled fastener), would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Wegman '351.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmaltz '220 in view of Wegman '351.

Schmaltz discloses first and second connecting members 12, 14 each defining at least one joining portion 22, 24 with each of said first and second connecting members being coupable to an end of a foundation form 16 so that when said forms are operably

positioned adjacent to one another said joining portions 22, 24 defined by each of said connecting members 12, 14 interlock with one another, (i.e., interleave). Each joining portion defines a shaped passage 15 extending there through with the shaped passage being substantially coaxial with one another when said first and second connecting members are operably positioned. An elongated coupling member 25 defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting members and thereby said foundation forms together. Attaching means in the form of apertures, (apertures along each connecting member 12, 14), can be seen in Figs. 1-3.

Schmaltz does not specifically call for a T-shaped slot to allow attachment of a form board to the surface of the connecting members via a fastener installed in the form board. However, Wegman '351 teaches utilization of a T-shaped slot within a side surface of the respective connecting members to allow for maneuverable attachment of the respective connecting member, or hinge, to a respectively attached board or panel.

Therefore, to have provided the side surfaces 26, 28 of Schmaltz with T-shaped slots in place of the apertures shown in Figs. 1-3, thus allowing a maneuverable attachment of the Schmaltz hinge to the form boards 16, (particularly a board possessing a preinstalled fastener), would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Wegman '351.

(10) Response to Argument

Appellant argues that “Nyman is not seen to disclose, teach or suggest all of the limitations of claim 1.” However, the rejection involving Nyman offers a combination of Nyman and Wegman with Wegman providing a teaching of the element (T-shaped slot) lacking in Nyman.

With regard to Appellant’s arguments found at the bottom of page 5 to the top of page 6 of the brief, it is not seen why the hinge or boards of Nyman cannot be applicable to a form for concrete foundation. In the first place the language of claim 1 is directed to two panels and a hinge with lines 16-19 of claim 1 appearing to present the “connecting members”, (hinge), to the “foundation forms”, (panels), via the “elongated coupling member”, (pintle). If the claimed “foundation forms” are indeed ever utilized to form a “foundation” one of ordinary skill in the building construction art realizes that a foundation may take many forms and sizes, (e.g., a few inches high and a few inches wide as an example). Such a foundation would not require “a massive amount of concrete”. Further, and with regard to Appellant’s argument that “Nyman would in all likelihood be immediately dismissed as being too flimsy and ill-suited to the application of forming a concrete foundation”, Applicant does not present a convincing explanation or evidence as to why a board and hinge as presented within Nyman cannot serve to hold concrete in the amount required to form a shallow foundation wall, (i.e., footing). In any event, as stated above the language of claim 1 is directed to two panels and a hinge.

As for Appellant's argument at lines 3-10 on page 6 of the brief, Nyman does show first and second connecting members 1a, 1b with each defining at least one joining portion 5, recitation at lines 57-62 in col. 1 of Nyman notwithstanding.

As for Appellant's argument found at the bottom of page 6 of the brief, Appellant does not present a convincing explanation or evidence as to why a hinge as shown by Wegmen cannot be used with a foundation footing form. In any event, as stated above the language of claim 1 is directed to two panels and a hinge.

With regard to Appellant's argument within the first paragraph on page 7 of the brief, Wegman's teaching of a T-shaped slot would apply to any and all apertures 7 of Nyman. Certainly one of ordinary skill in the art would realize that any or all of the apertures 7 of Nyman may be formed as a T-shape to allow for maneuverable attachment of the respective connecting member, or hinge, to a respectively attached board or panel including the capability of sliding the Nyman panels 14 into the respective "connecting members" 1a, 1b with the T-shaped slots serving to allow for such maneuverable sliding. Any "preinstalled" fasteners that may be present in Nyman being tightened after final alignment of the boards 14 with the respective "connecting members" 1a, 1b.

With regard to Appellant's argument within the first paragraph on page 7 of the brief, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one having ordinary skill in the art would have realized that any number of the openings within the “connecting members” 1a, 1b of Nyman may be formed as a T-shaped slot to allow for maneuverable attachment of the Nyman hinge to the boards 14.

As for Appellant’s argument against Schmaltz found on page 8 of the brief, the instant specification appears to describe an assembly having joining portions operably positioned in the same manner as disclosed by Schmaltz thereby rotatably and releasably joining said first and second connecting members in the same manner and fashion as Schmaltz, (i.e., the instantly disclosed and claimed joining portions have similar abutting surfaces which would prevent rotation once installed; see Figures 1, 2, and 4 of the instant application). With regard to Appellant’s argument found on page 8 of the brief, Schmaltz does disclose “an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages...slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting [members]”. The elongated coupling member 25 must define an exterior shape complimentary to a shape defined by said shaped passages 15 in order for it to be slidably received therein. Further, as stated above Schmaltz presents an assembly having joining portions operably positioned in the same manner as disclosed by the instant specification thus, Schmaltz discloses “rotatably...joining said first and second connecting members”.

Application/Control Number:
10/643,496
Art Unit: 3637

Page 9

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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